

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

5577-320 (RSW920010107US1)

Certification Of Transmission

I hereby certify that this Fee(s) Transmittal is being transmitted electronically to the U.S. Patent and Trademark Office on the date indicated below.

on July 20, 2006Signature Joyce PaoliTyped or printed name Joyce Paoli

Application Number

09/864,608

Filed

05/23/2001

First Named Inventor

Peter J. Brittenham

Art Unit

2157

Examiner

Avi M. Gold

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

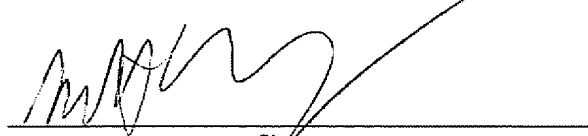
☒

attorney or agent of record. 38,176
Registration number

☐

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____



Signature

Scott C. Hatfield

Typed or printed name

919 854 1400

Telephone number

7-20-2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☒*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

RESPONSE UNDER 37 C.F.R. 1.116

**EXPEDITED PROCEDURE
EXAMINING GROUP 2157
PATENT**

Attorney Docket No. RSW920010107US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Peter J. Brittenham

Conf. No.: 3650

Serial No.: 09/864,608

Group Art Unit: 2157

Filed: May 23, 2001

Examiner: Avi M. Gold

For: **DYNAMIC REDEPLOYMENT OF SERVICES IN A COMPUTING NETWORK**

Date: July 20, 2006

Mail Stop AF

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**CERTIFICATION OF TRANSMISSION
UNDER 37 CFR § 1.8**

I hereby certify that this correspondence is being transmitted electronically to the U.S. Patent and Trademark Office on July 20, 2006.

Joyce Paoli

**REASONS IN SUPPORT OF APPLICANTS'
PRE-APPEAL BRIEF REQUEST FOR REVIEW**

This document supports the Pre-Appeal Brief Request for Review that is filed concurrently herewith along with a Notice of Appeal in compliance with 37 C.F.R. 41.31 and with the rules set out in the OG Notice of July 12, 2005. Applicants hereby request a Pre-Appeal Brief Review (hereinafter "Request") of the rejections of Claims 1, 18, and 19 which were finally rejected in the Final Office Action mailed April 20, 2006 ("Final Office Action") and the Advisory Action mailed July 6, 2006 ("Advisory Action").

Independent Claims 1, 18, and 19 have been rejected under 35 U.S.C. Sec. 103(a) as being unpatentable over U.S. Patent No. 6,363,411 to Dugan et al. ("Dugan") in view of U.S. Patent No. 6,631,512 to Onyeabor ("Onyeabor"). In response, the Applicants will show that Claims 1, 18, and 19 are patentable over Dugan for at least the reasons discussed below. Claim 1, for example, recites a method of dynamically redeploying web services in a computing network, the method including:

- receiving a redeployment trigger for a selected web service wherein the selected web service includes executable code;

- determining one or more network locations where the selected web service including the executable code has been deployed from its original location at an origin server;

- programmatically removing the selected web service including the executable code from the network locations and the origin server; and

- programmatically replacing the selected web service at the network locations and the origin server.

The Applicants respectfully submit that the combination of Dugan and Onyeabor fails to teach or suggest removing and replacing a selected web service including executable code in a computing network as recited in Claim 1.

As discussed in the Manual Of Patent Examining Procedure (MPEP), three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Moreover, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *See*, MPEP, Sec. 2143.

In particular, Dugan is related to "telecommunications networks" (col. 1, lines 17-18) as opposed to a computing network as recited in Claim 1. In rejecting Claim 1, the Office Action cites Column 20, lines 14-26 of Dugan. Regarding the recitation of "a selected web service", portions of Dugan cited by the Office Action state that:

These service node profiles (e.g., Table 1) and service profiles (e.g., Table 2) are input to SA and stored therein to enable automatic tracking of: 1) the capabilities of each service node, i.e., how many computers and SLEE(s), and the resource capacity of each; 2) which services and data are to be deployed to which service nodes and when; and, 3) the configuration of service execution, i.e., at which times an SLP should run persistently versus on-demand, for example. The capabilities of each node and computer in the network is maintained, so that simple and complex business rules governing data/service distribution, data/service activation and data/service removal may be applied to optimize the execution of services on IDNA/NGIN service nodes. (Emphasis added.)

Dugan, col. 20, lines 14-26. The "services" of Dugan, however, are discussed as follows:

The present invention is directed to an intelligent network designed to perform intelligent call processing services for any type of call received at a resource complex or switching platform. (Emphasis added.)

Dugan, col. 5, line 66 to col. 6, line 2. Dugan thus relates to call processing services as opposed to web services.

Accordingly, Dugan fails to teach or suggest redeploying web services in a computing network including programmatically removing a selected web service including executable code

and programmatically replacing the selected web service as recited in Claim 1. Moreover, Dugan also fails to teach or suggest receiving a redeployment trigger. In addition, the Office Action concedes that:

Dugan fails to teach the limitation further including the use of a selected web service wherein the selected web service includes executable code.

Office Action, page 3. For at least the reasons discussed above, Dugan thus fails to teach or suggest:

- 1.) removing a selected web service including executable code;
- 2.) replacing the selected web service; and/or
- 3.) receiving a redeployment trigger.

Onyeabor fails to provide the missing teachings. In support of the rejection, the Office Action states that:

Onyeabor teaches Web page development, deployment, and execution conducive to database access and manipulation over the Internet (see Abstract). Onyeabor teaches the use of the deployment of a web page with that web page including executable code (col. 6, lines 14-20, col. 16, lines 35-44).

Office Action, page 3. As discussed in Onyeabor:

the method and apparatus of the present invention include a Web page development tool which enables a developer to create a Web page document which includes executable code, thus eliminating the need to download foreign executables during display and manipulation of a page. This virtually eliminates the risk that malicious code will be downloaded and allowed to wreak havoc on the client machine.

Onyeabor, col. 6, lines 14-20. Onyeabor further states that:

after creation of a Web page by Web page development computer 110, a developer may then request that computer 110 "deploy" the new Web page. "Deployment" of a Web page refers to the act of sending the page to a server which will then provide access to the page to client computers via the Internet. Web page development computer may send the Web page to the server via the Internet, a LAN, a WAN, any other type of optical, wireless, or wired link (or links), or via a tangible data storage medium.

Onyeabor, col. 16, lines 35-44. Onyeabor, however, fails to teach or suggest:

- 1.) removing a selected web service including executable code;
- 2.) replacing the selected web service; and/or
- 3.) receiving a redeployment trigger.

As neither of the cited references (taken alone or in combination) teaches or suggest any of the three claim recitations noted above, the combination of Dugan and Onyeabor fails to teach or suggest the method of Claim 1. Stated in other words, Dugan and Onyeabor fail teach or suggest all the claim limitations as required by MPEP Sec. 2143.

In addition, there is no motivation to selectively combine elements of Dugan and Onyeabor to somehow teach or suggest the method of Claim 1. In particular, there is no motivation to combine aspects of Web page development/deployment/execution of Onyeabor (*see*, Onyeabor, col. 1, lines 8-11) with telecommunications service processing of Dugan (*see*, Dugan, col. 1, lines 17-22). Moreover, there is no reasonable expectation that aspects of Web page development/deployment/execution from Onyeabor can be successfully substituted for elements of the telecommunications switching network of Dugan.

Accordingly, the Applicants respectfully submit that the combination of Dugan and Onyeabor fails to teach or suggest the recitations of Claim 1 and that Claim 1 is thus patentable. The Applicants further submit that Claims 18 and 19 are patentable for reasons similar to those discussed above with regard to Claim 1. In addition, Dependent Claims 2-17 and 20-23 are patentable at least as per the patentability of Claims 1, 18, and 19 from which they depend.

The Advisory Action states that the recitation "web services in a computing network" in Claim 1 has been given no patentable weight because it occurs in the preamble. In response, the Applicants note that a/the "selected web service" is recited in each step of Claim 1, and that "web services in a computing network" from the preamble of Claim 1 defines a/the "selected web service" as being in the computing network. Accordingly, the indicated recitations in the preamble must be given patentable weight.

The Advisory Action further states that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. The Applicants respectfully submit, however, that the prior art references when combined must teach or suggest all the claim limitations (*see* MPEP Sec. 2143), and that neither of the cited references (taken alone or in combination) teaches or suggests: (1) removing a selected web service including executable code; (2) replacing the selected web service; and/or (3) receiving a redeployment trigger.

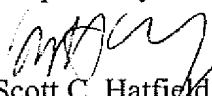
In addition, the Advisory Action states that motivation for the combination of Dugan and Onyeabor is found at column 6, lines 19-20 of Onyeabor. The cited portion of Onyeabor states that:

This virtually eliminates the risk that malicious code will be downloaded and allowed to wreak havoc on the client machine.

Onyeabor, col. 6, lines 18-20. As set forth above, however, there is no motivation to combine aspects of Web page development/deployment/execution of Onyeabor (*see*, Onyeabor, col. 1, lines 8-11) with telecommunications service processing of Dugan (*see*, Dugan, col. 1, lines 17-22). Moreover, there is no reasonable expectation that aspects of Web page development/deployment/execution from Onyeabor can be successfully substituted for elements of the telecommunications switching network of Dugan.

Accordingly, the Applicants submit that all pending claims in the present application are in condition for allowance, and allowance of all claims is respectfully requested in due course. Separate patentability of dependent claims has not been presented herein for the sake of conciseness. Dependent Claims 2-3, and 20-29, for example, are separately patentable for at least the reasons discussed in the Request For Reconsideration of June 7, 2006, the contents of which are incorporated herein by reference.

Respectfully submitted,


Scott C. Hatfield
Registration No. 38,176

USPTO Customer No. 46589
Myers Bigel Sibley & Sajovec
Post Office Box 37428
Raleigh, North Carolina 27627
Telephone: 919/854-1400
Facsimile: 919/854-1401
Attorney Docket 5577-320